IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Misc. application No. 877 of 2001

Date of decision:- 13/4/2006

~~A.F.R. (Approved for Reporting)~~

Not approved for reporting

Date:- 13/4/2006 Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Miscellaneous Application No. 877 of 2001
(Old No. 1262 of 1995)

1. J.E. Talaulicar, Ex. Managing Director

2. U.K. Goel
   Assistant General Manager
   Hire Purchase

3. S. Chakravarti (Official of Hire Purchase)
   All C/o Tata Engineering and Locomotive Company Ltd.
   Bureau of Hire Purchase Credits
   Centre- 1, (27 the Floor), Cuffe Parade,
   Bombay- 400 005 .....Applicants

Versus

1. Gurpreet Singh
   S/o Mall Singh
   R/o 1-C, Hardwar Road, Dehradun

2. 1st Additional Chief Judicial Magistrate
   Dehradun ...Respondents

Sri V.K.Bisht, Senior Advocate assisted by Ms. Seema Sirohi, learned counsel for the applicants.
Sri Nandan Arya, learned A.G.A. for the State

Hon'ble J. C. S. Rawat, J.

This petition u/s 482 Cr.P.C. has been directed to quash the entire proceedings including the complaint and summoning order dated 27.05.1995 passed by the 1st Additional Chief Judicial Magistrate, Dehradun in Case No. 685 of 1994.

Brief facts for the disposal of this petition are that the complainant purchased a truck from Commercial Motors Dehradun. At the time of the purchase Rs. 77,637/- was paid by the complainant and rest of the amount was to be paid in 23 equal instalments to the accused No. 1. The total amount of the said truck with interest was Rs. 3,27,637/-. The complainant made default in making the payment to the financier and thereafter a notice was issued on behalf

of the company-accused No.1 to the complainant on 04.09.1993 requiring him to pay the outstanding amount till 31.09.1993 alongwith overdue compensation on the delayed payment within 21 days. Thereafter the said amount was not paid and the said vehicle was ceased by the financier and the possession was taken by the company. When the said truck was in possession of the applicant/company, notice was again given to the complainant to pay the dues so that the truck may be handed over to him. But inspite of the notice no such amount was paid and thereafter the said truck was auctioned. Thereafter the complainant filed the complaint before the Magistrate alleging therein the above facts and also alleged that the accused/applicants had malafide intentions from the very inception and they were working with clear intention to usurp the truck of the complainant and thereby caused wrongful loss to him and loss to his prestige. Learned Magistrate took the cognizance u/s 120-B, 420 I.P.C.

No counter affidavit has been filed in this matter.

I have heard learned counsel for the parties and perused the record.

It was contended on behalf of the applicants that the complainant was a defaulter and had committed the necessary breach of the hire purchase agreement and inspite of the necessary follow up done by the applicant-company, he failed to clear the overdue alongwith necessary compensation due thereon. The accused on behalf of the company had opted their option to re-possess the vehicle according to the terms and conditions of the hire purchase agreement. It was further contended that if the said vehicle was taken into possession in the said terms and conditions of the hire purchase agreement, the accused cannot be held guilty and they have exercised their lawful right. It is also pointed out in the complaint that the hire purchase agreement was not revoked by the complainant. The complainant himself admitted that there was a hire

purchase agreement. The Hon'ble Apex Court in **Orix Auto Finance (India) Ltd. Vs. Jagmander Singh and another (2006) 2 SCC 598** has held that if the hire purchase agreement has been violated, the Finance company has got the right to cease the vehicle and repossess the said vehicle in terms and conditions of the hire purchase agreement. In **Sardar Trilik Singh and others Vs. Satya Deo Tripathi (1979) 4 SCC 396,** the property was ceased in exercise of the bonafide right over it and complaint was filed before the Magistrate and the Magistrate took the cognizance against the applicant but the Magistrate did not consider that there was a hire purchase agreement and there was option of the financer to repossession the property. If the default has been committed and the right of the repossession exists, the financer becomes the rightful owner of the property to repossess it. The Hon'ble Apex Court held that if the criminal court has taken the cognizance against the financer company or against the accused, it is a case wherein there is an abuse of process of law and the High Court should prevent it by exercising it power u/s 482 Cr.P.C.

In view of the above discussion, I am of the view that the entire proceedings including the complaint and summoning order dated 27.05.1995 passed by the 1st Additional Chief Judicial Magistrate, Dehradun in Case No. 685 of 1994 are liable to be quashed and the same is accordingly quashed.

The petition is accordingly allowed.

(J.C.S. Rawat, J.)

13th April 2006
Shiv